

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on February 9, 2001 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. David Wanzenried (D)

Members Excused: Rep. Brett Tramelli (D)
Rep. Christopher Harris (D)
Rep. Rod Bitney (R)

Members Absent: None.

Staff Present: Robyn Lund, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 460, 2/6/2001; HB 332,
2/6/2001; HB 462, 2/6/2001; HB
343, 2/6/2001
Executive Action: HB 299, HB 421

HEARING ON HB 460

Sponsor: Representative Art Peterson, HD 10

Proponents: Ed Hudson, realtor
Peggy Trenk, Montana Association of Realtors

Opponents: None

Opening Statement by Sponsor:

Representative Art Peterson, HD 10, said that this bill is very direct and very simple in intent. The intent of the bill is to move the current voluntary action levels for radon mitigation from 4 pci/liter to 8 pci/liter. He believes that the evidence from the scientific community supports the position that 8 is as reasonable as 4 in terms of lung cancer development. They want to make very clear that the importance of this change is tied to the unnecessary and sometimes substantial costs that Montana homeowner owners, who have to mitigate, will face. He submitted and explained a chart. **EXHIBIT (nah33a01)** Radon is a gas produced by the deterioration of Radium. Radon is radioactive, and it decays and loses an alpha particle and produces a daughter called Allonium **. This is what causes the damage to the lungs. In the mid '80s radon began to be tied to some high levels of lung cancer. Since then, both private and government entities have tried to determine the migration dynamics of radon gas, how we could arrive at some levels that are reasonable in terms of requiring mitigation. This bill asks if the 4 pci limit is reasonable or should we move it to 8 pci. The present level in Montana law follows the federal guidelines established by the EPA. Mason Cox was asked by the EPA for what standards should be established. He replied somewhere between 4 and 12, and the EPA selected 4. Mr. Cox never intended that to be a standard, that was a guideline. There is slight elevation of lung cancer when you go from 2 to 10, the real problem arises when you go beyond 10 or 20. 8 is a reasonable standard.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 12.1}

Ed Hudson, realtor, submitted and read from a handout entitled Radon Update: Facts Concerning Environmental Radon.

EXHIBIT (nah33a02)

This is a problem for first time home buyers and there is information that would support that 8 pci is a safe level.

Peggy Trenk, Montana Association of Realtors, stated that they support this bill for the reasons that have all ready been heard. They operate under a strict code of ethics and standards of practice. One of those standards is that when they become informed on issues that would affect their consumers and that they believe need to be addressed in the appropriate forum, they feel a responsibility to come forward and support that effort.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 27.7}

REPRESENTATIVE JOAN HURDLE asked if the levels are established by how may deaths occur at each level. **Rep. Peterson** replied that studies had tied this to lung cancer deaths. **REP. HURDLE** clarified that these deaths are linked. **Rep. Peterson** said that it is difficult to link them directly. **REP. HURDLE** asked how many deaths are acceptable. **Rep. Peterson** replied that that is a relative question. There is a certain element of cost effectiveness in anything that we do. It is true that each life is precious, but it is also a question of economic feasibility. **REP. HURDLE** commented that we do need to sell more houses. **Rep. Peterson** said that she had missed the point. The point is that, from all the evidence that he has gathered, we do not know that 8 is any less dangerous to health than 4. **REP. HURDLE** said that is why she wanted to know the number of deaths at each level. **Rep. Peterson** said that studies indicated that it may be two deaths at 4 pci, and three deaths at 8 pci, but that is a maybe.

REPRESENTATIVE RON ERICKSON asked if the sponsor is familiar with dose response curves, that is what we have here. Has the sponsor ever seen a dose response curve for any radioactive nuclei problem which is anything but linear? **Rep. Peterson** said no. **REP. ERICKSON** said that the distinction between radioactive nuclei and other toxic substances is that the dose response curve is that there is no dose at which there isn't damage. This bill tells people that it is safe at 8 pci, so the home buyer now believes that the best science can give them is that it is safe enough at 8. Is that the end result of this bill? **Rep. Peterson** said that is not what was indicated. We can't ascertain safety at any level. This is just saying that if the EPA has established the level at 4 pci, then 8 pci is as good. **REP. ERICKSON** clarified that the idea is that it is safe enough, not that it is totally safe. **Rep. Peterson** said that was correct.

REPRESENTATIVE GAIL GUTSCHE asked a question of Art Comptom, DEQ. Is radon a known carcinogen? **Mr. Comptom** replied that it is.

REP. GUTSCHE clarified then that it is not just linked to cancer, it is known to cause cancer. **Mr. Comptom** replied that it is classified by the federal government as a known carcinogen.

REP. GUTSCHE asked if it was established anywhere what a safe level of radon is. **Mr. Comptom** said that the studies are always a little squishy because of the numbers and the degrees of error. The EPA action level is suggested as 4 pci/liter. All 50 states use that level. The UK uses 5.2. Canada is the only area that allows for a much higher level, the justification for that indicates that their socialized medicine system can't respond or support outreach education and mitigation efforts for a lower action level. **REP. GUTSCHE** clarified that every other state in the union uses the 4 pci level. **Mr. Comptom** said that was true as far as they know. **REP. GUTSCHE** asked if the CDC took a stand on this issue. **Mr. Comptom** was not aware that the CDC had a different level than 4 pci. He would be surprised if they did.

REP. GUTSCHE asked for more information on mitigation.

Mr. Comptom said that there are two general approaches. In existing buildings you want to increase ventilation. Outside drafting of combustion sources will make a difference. For new construction you will generally see builders put an air barrier below a crawl space or below the lowest suspended subfloor. Generally this is a sheet of plastic that is put below the footings and a pipe that has air inlets at the bottom and it generally goes all the way up through the stories in an interior wall up through the roof. That gives positive ventilation to the crawl space. **REP. GUTSCHE** asked if, in an existing house, would a simple fan work. **Mr. Comptom** said that that does work and for existing houses that is generally the approach that they take. Caulking foundation and footing cracks, and additional ventilation on lower floors are the most common mitigation efforts that they would do for an existing house. **REP. GUTSCHE** asked, if you, Mr. Comptom, bought a house with a radon level of 6, would you feel comfortable moving in there without it being mitigated? **Mr. Comptom** replied, acknowledging that this is a personal question, he would walk away on looking to comply with that federal action level.

REPRESENTATIVE CINDY YOUNKIN asked what kind of level would be found in the radon health mines that are found just south of Helena. **Mr. Comptom** did not know what the levels are. It is a high intensity, short duration, which is very different than chronic residential exposure.

REPRESENTATIVE BOB STORY asked if the capitol building had been radon tested. **Mr. Comptom** believes that, prior to renovation,

there were some EMF studies done that had to do with occupational exposure. However, they don't generally push occupational exposure as an issue.

REPRESENTATIVE AUBYN CURTIS asked how prevalent does DEQ feel this problem is in the state. **Mr. Comptom** thinks that it is very localized, site-specific.

REP. CURTIS asked if there is a disclosure requirement of realtors when they make a sale as to whether or not there is radon content on the premises. **Ms. Trenk** said that, yes, there is a disclosure required. She added that the point of this discussion is that, if people are spending money for this mitigation, they are spending their equity.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 45.9}

Rep. Peterson said that the reference to all the states having 4 pci/liter as a standard is what happens when you have a national agency setting a standard and in order to get those funds you better play the game according to those standards. Dr. Cox said that it is very frustrating to see this kind of thing happening and to see it continued. What happens when we know that something is incorrect and it is in the mainstream? He submitted a map that shows Radon in Indoor Air in Montana.

EXHIBIT (nah33a03)

HEARING ON HB 462

Sponsor: Representative John Witt, HD 89

Proponents: Sandy Olson, DEQ
Ronna Christman, Montana Petroleum Marketers
Association

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 49.6}

Representative John Witt, HD 89, said that in many areas of Montana there have been issues with clean-up of petroleum storage tank releases. These clean-ups are never as easy or quick as we would like them to be. Often, future commercial use of the property is affected by these releases. Under the current

petroleum tank release clean-up act, owners and operators of the petroleum storage facilities remain eligible for the use of the petroleum tank release compensation fund as long as they remain in compliance with the applicable regulations. However, if eligible owner or operator of a petroleum storage tank commits a violation while remediating a release or leak from a petroleum storage tank, that owner or operator loses all eligibility for clean-up reimbursement from the federal tank release compensation fund, as the statute is currently written. This bill is a proposal under which eligibility for the fund can be restored to the owner or operator who, after being found in violation, comes back into compliance. Without these funds, remediation on a number of sites would cease until such a time as another funding source is available. Many owners and operators in small towns don't have the financial resources to undertake a remediation effort without the support of the petroleum tank release compensation fund. This bill would ensure that they are able to continue to access financial support in the event that they inadvertently fail to meet some of the compliance criteria.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 53.3}

Sandy Olson, DEQ, stated that when a tank leak occurs, an owner or operator who is in compliance becomes eligible for reimbursement of expenses, up to a cap of \$982,500. The owner/operator is required to pay up to 50% or \$17,500 for the cost of clean-up. The average cost a clean-up is \$56,000. The attorney general opinion noticed that the permanent loss of eligibility did not appear to be consistent with legislative intent. This bill proposes to restore eligibility to the fund if the owner/operator comes back into compliance. Owners and operators making a sincere effort to be in compliance will not be penalized by permanent loss of eligibility, should they have a problem. Adoption of this bill would facilitate clean-up of release sites over the long term and continued availability of funding would encourage owners and operators to remain in compliance and to return to compliance should a violation occur.

Ronna Christman, Montana Petroleum Marketers Association, said that her organization is in support of this effort to clarify the eligibility requirement. A violation may be something as simple as forgetting to fill out a monthly inventory control record.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 0.3}

REPRESENTATIVE BOB STORY asked what some of the violations are that would create ineligibility. **Ms. Olson** said that some things they have seen would be failure to report releases immediately, failure to implement corrective actions. There have also been a number of smaller issues.

REPRESENTATIVE JOAN HURDLE asked a question of Ms. Olson. How do you assess if a business has come back into compliance?

Ms. Olson replied that, when a violation is issued, there is normally an abatement order in it; that order tells how you are to fix the violation. The board is wanting to look at timeliness of compliance with that abatement order. **REP. HURDLE** is trying to figure out what exactly a clean-up is. **Ms. Olson** said that free products and contaminated soil must be removed. Once that is done they can backfill with clean soil. This is one way of doing a clean-up.

REPRESENTATIVE RICK LAIBLE asked what the driving factor was that caused this bill to be drafted. **Rep. Witt** said that it goes back to some discussion in his community. There is some animosity felt towards the agency.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 5.7}

Rep. Witt pointed out that there is a fiscal note with this. The opportunity for Mom and Pop businesses to get back into business is worth the cost. This could impact everyone in this room.

HEARING ON HB 332

Sponsor: Representative Rick Dale, HD 39

Proponents: Ronna Christman, Petroleum Marketers Association
Burl French, Northwest Fuel Systems

Opponents: Mike Crumley, Keneco Petroleum

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 7.1}

Representative Rick Dale, HD 39, said that this bill concerns the inspection process. Currently the law that covers the inspection part of the underground tank program has been in place for two years. It was an effort that required considerable input and was

accomplished late in the last session. It was felt that it was important because it would provide a way, where there had been releases from underground storage tanks, for those to be cleaned up and a new installation be put into service and then those installations inspected. It also provided the parameters by which new installations would be inspected. At that time, they were in such a hurry that they didn't really think into the future. Consequently, they have ended up with very few inspectors in a very large state. A lot of businesses with underground storage tanks, who are moving to clean-up their sites or put in new sites, are having difficulty finding inspectors. This bill addresses a limitation that was put in the original law that the same firm that put in the tank could not inspect the tank the first time. Those professionals have moved on into independent jobs or have changed firms, so it has greatly reduced what is all ready a small pool of those who could legally inspect these tanks. This bill says that the one who can't inspect the tank in the first three years is the one whose name is on the license to install that tank. There are about 25 inspectors in Montana. It was hoped that there would be 40.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 11.8}

Ronna Christman, Petroleum Marketers Association, stated that HB 332 attempts to modify the existing restriction as to who can do an inspection, while at the same time maintaining the integrity for a possible conflict of interest. There are approximately 1600 underground tank sites in the state that need to be inspected by January 1st, less than 60 have been done at this point. The problem with the number of inspectors is because someone from the company that they worked for had been involved in the installation or repair of the tank. There are actually 24 private inspectors, 10 of those work for companies that also have licensed installers. This means that many tank owners will have to hire someone from outside of their area, thereby raising the costs. This is becoming a large issue. The inspection is much more than just inspecting the tank, it is a total site inspection that would include things such as inventory control records, et cetera. Every year a tank owner is required to have a tank test on the quality and condition of the tank, this is beyond the inspection process being discussed. The old law also provided for oversight inspectors that would go in behind the inspectors randomly to make sure that the inspections are being done correctly. There is a huge liability for the inspector if a false certification is given. They have everything to lose and nothing to gain by saying a site is in compliance when it isn't. Tank owners have established relationships with the companies and they want to do business with people they know and trust.

Burl French, Northwest Fuel Systems, owns a company in Kalispell with 11 licensed installers and 2 licensed inspectors. The inspectors have not been involved in any installations, but yet they can't inspect any job that the installers from his company have been involved in. This is driving the cost of the inspections up. There are 1600 sites that need to be inspected, 53 of them have been inspected. This bill will help get these inspections done and will relieve some of the cost. They are licensed with the state of Montana to do these inspections and they are liable for them. There is no incentive to falsify any records at these sites.

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 21.8}

Mike Crumley, Keneco Petroleum, is a licensed installer and inspector. He came across a tank that was installed illegally. His concern is that if someone installed a tank and they thought that it was a legal installation when, in fact, it was not, if they come and do an inspection on that site they will say that it is installed legally, whole heartedly believe that it is installed legally, even though there is a questionable aspect to that installation. The other reason that he is opposing this is that there are some one-man operations that could go in and undercut a bid to get the work, cut corners on the installation, go back and verify that the work was done properly and not have any kind of checks and balances in the work.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 23.8}

REPRESENTATIVE DEE BROWN asked why for a while we saw underground tanks, then we saw above ground tanks and now we are seeing the underground tanks again. **Mr. French** said that ten years ago, at public fueling facilities, you could not install an above ground tank. It was found that many small businesses could not afford this, so that law was changed, this was in the last 4 - 5 years, but it depends on the population of the area. **REP. BROWN** asked how one becomes an inspector. **Mr. French** said that there is a test that you must pass. The average person could probably not pass the test. **REP. BROWN** clarified that this is a narrow scope of people, even within the industry there is not a large pool. **Mr. French** replied that was correct.

REPRESENTATIVE RON ERICKSON asked for specific information of the number of inspections for Missoula. **Ms. Christman** did not have that information. There are six inspectors in Missoula.

REP. ERICKSON said that last time the House passed a bill that would allow for a two-year period for city and county inspectors to do the inspecting with the idea that we would be catching up so much in the next two years that we would no longer need those folks. Is it correct that that hasn't happened? **Rep. Dale** said that is apparently correct. **REP. ERICKSON** asked if it would be reasonable at this time to go ahead and have another two year period in which we would say that the cities and counties can do these inspections. **Rep. Dale** replied that the cities and counties had been hoping to make some money. The fear was that there would be a rush by many people to become inspectors, that hasn't happened. DEQ has six inspectors in the Missoula area and the only inspectors that can't do private inspections is the oversight inspector and the three national park inspectors.

REP. ERICKSON said that if there are six inspectors in Missoula they are probably doing better there than elsewhere. The original issue was that there were a lot of inspections needed and the thought was that this was going to give us more. There are inspectors in the state who, because they are city or county employees, are not allowed to do these inspections anymore. Can we increase the number of inspections by allowing city and county folks, who are all ready licensed, to do this? **Rep. Dale** replied that that makes sense. It is his understanding that they can do that now. There is nothing preventing them from doing that. Are you, **REP. ERICKSON**, suggesting that we legislate something directing the counties to send their inspectors around the state?

REP. ERICKSON said that last session they passed the idea that for two years city and county inspectors would have full rights to go ahead and do all the work that they needed to do and the Senate took that out of the bill. The bill they passed no longer allows city and county folks to do that.

CHAIRPERSON YOUNKIN suggested that that be investigated to determine the exact nature of HB 158 from the last session and the committee can amend this bill in executive action if they wish.

REP. ERICKSON redirected his question to Ronna Christman.

Ms. Christman said that the House specified that the local governments were going to conduct those inspections and the Senate to it out as a mandate. Local government inspectors can still do these inspections if they so choose, they haven't chosen to do that. There is nothing saying that they can't do it.

CHAIRPERSON YOUNKIN clarified that the county can do it, but they are not required to do it. **Ms. Christman** said that was correct.

REPRESENTATIVE JOAN HURDLE asked how much each inspection costs.

Mr. French replied \$250 to \$400 depending on how much travel time there is.

REPRESENTATIVE BOB STORY asked if the Montana Petroleum Marketers Association has any inspectors. **Ms. Christman** replied that she was not aware of any. **REP. STORY** asked if that wouldn't be one solution to the problem. **Ms. Christman** said that she thought it was a great idea.

REP. HURDLE asked how much it costs to get a license. **Mr. French** wasn't sure what the cost was.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 38.3}

Rep. Dale said that the security of the system is still protected because the individual who signed the permit and supervised the installation of the tank can't be the first inspector to inspect the tank within the three-year period following the installation. The state has a training and certification program available, there just aren't the people who want to take advantage of it and become inspectors. There may be a short-term job in this, but an inspector would usually have to work for a consulting firm and do other work to make a living.

HEARING ON HB 343

Sponsor: Representative David Wanzenried, HD 68

Proponents: Mike Kadas, Mayor of Missoula
Ken Soderberg, Montana Recreation and Park
Association
Alec Hansen, Montana League of Cities and Towns
Linda Stoll, Montana Association of Planners

Opponents: Peggy Trenk, Montana Association of Realtors
Andy Skinner, Helena Property Owner's Association
Larry Marshall, MTA
William Spilker, realtor
Byron Roberts, Montana Building Industry Association
Stephen Ries, Ries Surveying

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 40}

Representative David Wanzenried, HD 68, stated that this bill addresses an issue of parkland dedication in urban areas. It is based on a quality of life question. Under current law

subdivisions are required to make parkland dedications when they are a major subdivision, which includes more than five lots. Minor subdivisions are not subject to the same requirement. This bill would change that. Open space in urban areas is becoming an increasing problem. In many areas there are virtually no parklands at all for miles and miles, but there are hundreds of housing units. Kids are being forced to play in the street. This bill allows cities to require parkland dedication for minor subdivisions in cash or land donation. This can't exceed what would be required for a major subdivision. There will be opposition because it may drive up the cost of housing. However, he asked what a family looks for in buying a home. It isn't just the structure, it's the location. This would ensure proximity to parkland.

Proponents' Testimony:

Mike Kadas, Mayor of Missoula, explained the growth pattern of Missoula. He showed a map that would show this. There are many minor subdivisions just outside the urban area, basically expanding the urban area. As infill happens there are going to be a lot of minor subdivisions, which will add hundreds of households, but no parks. Proximity is really important for parks. They want to create the opportunity to create parks in areas where there is no mechanism to put one currently. It will add some cost, but it will add more value.

Ken Soderberg, Montana Recreation and Park Association, supports this bill. As professionals in this area they support any efforts for the preservation, creation and development of parks and open spaces. The benefits that communities receive from parks is well documents. They include fostering childhood development, building self-esteem, enhancing the health and well-being of residents, building community pride, enhancing land value, et cetera. As new development occurs there is a corresponding increase in use and need of land.

Alec Hansen, Montana League of Cities and Towns, said that his organization has unanimous support for this bill.

Linda Stoll, Montana Association of Planners, submitted written testimony. **EXHIBIT**(nah33a04)

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 12.1}

Peggy Trenk, Montana Association of Realtors, believes that this bill sets forth a significant change in the treatment of minor

subdivisions. The effect of requiring minor subdivisions to set aside parkland or pay a fee in lieu of will lead to a cost burden to small developers. Affordable housing starts with affordable land. The costs associated with this will place a greater burden on the small developer than the large developer because it is more difficult for them to recover the costs. We are talking about infill. Adding fees is not going to be an incentive for infill. They encourage the committee not to subject the small developer and the buyer to the same kinds of costs when they don't have the same impacts as the major. There are other tools that might solve the problem without requiring this added cost.

Andy Skinner, Helena Property Owners Association, said that the idea seems great, but it doesn't work in practice. It increases the costs of lots. The biggest problem is the equal protection under the constitution. The new development will be paying for a park for all the other people in the area. There is no guarantee that the park will be close to the new development. The solution to this problem, as he sees it, is to create an RID to pay for the park and put the load on all the people in the district.

Larry Marshall, MTA, said that we need to let the market dictate where people will live. The governing body usually takes cash in lieu of that they use for other purposes and you don't get a park anyway. He has a subdivision with 123 lots. The county made him pay cash, even though he had offered land. That money went to a bike path that has no relation to his subdivision. If this bill does pass it would be unfair to the land developer and the buyer. There are other methods that would work better to develop parkland.

William Spilker, realtor, said that this is an attempt to overturn legislation that was passed in 1995. He is opposed to this for five main reasons: 1, the impact of five or fewer lots is minimal on park requirements; 2, most minor subdivisions occur outside city limits and occur in one acre or larger lots; 3, you always have a cash in lieu of instead of land dedication, that doesn't necessarily go to benefit where your subdivision is; 4, if there are lots that they have all ready paid the parkland fee on and they develop those lots with apartments, they would be asked to pay an additional parkland fee; 5, he dislikes the idea of creating state law that will impact people statewide when this is a local issue. There are other alternatives to this problem.

Byron Roberts, Montana Building Industry Association, said this bill has a strong impact on housing affordability at a time when the average cost of a home has just exceeded \$150,000 in Montana. It also has a strong impact on providing incentives for people to want to live in cities. A major reason for living outside of the

city is the cost of the lot. This would result in just another fee, not parkland dedication. There is a problem, but there is a better way to fix it.

Stephen Ries, Ries Surveying, said that we are in a state of 100 million acres and less than 1 million people. These problems should be solved locally.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 30.2}

REPRESENTATIVE DEE BROWN asked how many major subdivisions in Missoula have been put in place in the last 10 years. **Mayor Kadas** said that on the south end of Missoula they have added 1000 to 1500 homes in the last 15 years. There are a 230 unit, 100 unit and a 250 unit subdivision in front of the city right now. **REP. BROWN** asked what percent of those the city has taken money in lieu of parks. **Mayor Kadas** said that in most of the bigger ones there is land dedication instead of a fee. **REP. BROWN** asked what is Missoula doing to ensure that they are using some RID money to purchase some land in these areas of Missoula that don't have parks. **Mayor Kadas** said that in Section 3, Sub 5, the language requires that when there is a fee, it has to be used for parks that serve that particular subdivision. SIDs and RIDs are an option, but there continues to be the fairness issue. You are essentially putting the burden on those who have all ready built and not those who would build in the future. **REP. BROWN** sees the problem, but if a park is really wanted, the people in the area might say that they are willing to pay for it. **Mayor Kadas** said that implied that we don't do this until the whole area is developed. There are real issues of fairness with this.

REPRESENTATIVE RON ERICKSON asked if Ms. Stoll could tell us whether or not this is a Missoula problem or a wider problem. **Ms. Stoll** said that she knows that it is a problem in Helena. Previous testimony indicated it was also a problem in Great Falls. **REP. ERICKSON** asked if she thought that the planners would bring some sort of lawsuit about this. **Ms. Stoll** replied that Mr. Horne's letter referenced a legal concept called rough proportionality, but she would be uncomfortable trying to speculate.

REP. ERICKSON asked if Peggy Trenk was particularly concerned about the fee in lieu issue, instead of land. **Ms. Trenk** thought that would the fee in lieu would probably be the preference. **REP. ERICKSON** asked how much this fee would be. **Ms. Trenk** said that in Section 3 of the bill it cites a list of percentages

given the size. **Mr. Spilker** said that you either give land or money based on the undeveloped value of the land. **REP. ERICKSON** asked if it was true that if you put a piece of property into a park that would take more value away than if you gave cash. **Mr. Spilker** pointed out that it does cost money to develop the land. **REP. ERICKSON** clarified which choice was worth more to the developer. **Mr. Spilker** said that it was the decision of the governing body which was taken, but that it didn't matter one way or the other because the cost would be similar.

REPRESENTATIVE KEITH BALES said that it appears that the cash that you would get from the small subdivisions wouldn't be enough to buy land and develop a park, is there a system in place whereby you are setting money aside or doing something to develop parks. **Mayor Kadas** said that the city of Missoula does have a system that they are trying to develop parks. Most of the funds for that come out of the general fund or an open space bond. They have purchased 100 acres for a regional park.

REP. BALES clarified that there was a general tax for the development of parks, isn't that more of an equitable situation than what this bill will do. **Mayor Kadas** said that it is not. They are not able to use the money generated by the tax to develop, only for the purchase of land. The development cost is usually as much as the purchase of the land.

REPRESENTATIVE BOB STORY asked if Helena had also passed a bond to buy open space. **Ms. Stoll** said that was true, but that was inside the city limits.

REP. STORY asked if the Missoula park and recreation budget was adequate to maintain the parks that they have. **Mayor Kadas** said that it was an ongoing battle.

REPRESENTATIVE RICK LAIBLE asked how many parks had actually been created in the city of Missoula. **Mayor Kadas** said that they had used the fund that they have to maintain parks, but there hadn't been any real major purchases made. **REP. LAIBLE** clarified that they hadn't created any new parks, even though there had been some fees paid in lieu of land. **Mayor Kadas** said that they had annexed some areas that had existing parks, but the funding from the fees has not created any new parks in the time that he had been mayor.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 53.3}

Rep. Wanzanried pointed out that this law is discretionary. It doesn't mandate anything, but it does give additional tools to address this problem if they are needed. We are here serving new needs as they exist, to change laws, to modify and clarify them. Things change, that is why we are here. It is the accumulation of minor subdivisions that is creating the Montana. This is true statewide.

EXECUTIVE ACTION ON HB 299

{Tape : 2; Side : A; Approx. Time Counter : 0.6}

Motion: REP. ERICKSON moved that HB 299 and amendments DO PASS.

Discussion:

REP. ERICKSON explained the amendments. They do things such as add a grandfather clause, protect reclamation in regards to bankruptcy, and clean-up language.

Motion/Vote: REP. ERICKSON moved that AMENDMENTS TO HB 299 DO PASS. Motion carried unanimously.

Motion: REP. ERICKSON moved that HB 299 AS AMENDED DO PASS.

Discussion:

REP. ERICKSON said that there are real problems statewide. There have been 20 bonds forfeited in the past. In a few of those the state had to go in and spend money for clean-up. It puts gravel pits into the same general set of regulations that are set forth in the reclamation act.

REP. BROWN questions the need for a bill that is targeted at 2100 gravel pits, one percent of the gravel pits in the state.

REP. ERICKSON said that we need to think about distant futures. We are going to need gravel in the state for a very long time to come. The question is: Is this part of the reclamation act up to snuff? It has not been in the past.

REP. HURDLE stated that there is a problem. It seems like the gravel pit portion doesn't go with the rest of the reclamation plan.

REP. STORY disagrees that this bill would have much to do with existing gravel pits. In Billings, where Walmart sits, that

whole section of town used to be a gravel pit. He isn't concerned about the gravel pits getting cleaned up.

REP. GUTSCHE commented that **REP. ERICKSON** worked hard with the opponents of this bill to answer their concerns by making the amendments. We talk about bonding a lot. We know that clean-up will always be required with mining. This bill speaks to that. Bonding is not a punishment to people.

REP. DALE said that he takes exception to the statement that every mining situation presents a situation that will require clean-up. The town of Laurel has a park where there used to be a gravel pit. Hundreds of lakes are located where there used to be mines. Bonding is important, but he doesn't think it is a problem.

REP. CURTIS said that, since 1955, there have only been 39 complaints filed.

CHAIRPERSON YOUNKIN thought that line 17 on page 3 seems to be too broad for her to be comfortable with. Can the sponsor respond to that? **REP. ERICKSON** said that the same line is seen in three other sections of the law. Perhaps the concern is that there are more gravel pits than other kinds of mines. There are some bad actors, but mostly there are good actors. This gives us a chance to put this type of mining in line with other kinds of mining. **CHAIRPERSON YOUNKIN** said that there are places where gravel pits are being encroached by urbanization. She sees this as a potential for increased conflict where there was not before. **REP. ERICKSON** doesn't see that there will be this problem.

Motion/Vote: **REP. ERICKSON** moved that **HB 299 DO PASS AS AMENDED**. Motion failed 8-12 with **Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzienried** voting aye.

By committee consensus the vote was reversed to table the bill. **HB 299 was tabled.**

EXECUTIVE ACTION ON HB 462

Motion/Vote: **REP. ERICKSON** moved that **HB 462 DO PASS**. Motion carried unanimously.

EXECUTIVE ACTION ON HB 421

Motion: **REP. ERICKSON** moved that **HB 421 DO PASS**.

Motion: REP. GUTSCHE moved that **AMENDMENT 42101 TO HB 421 DO PASS.** Motion carried unanimously.

Motion/Vote: REP. WANZENRIED moved that **AMENDMENT 42102 TO HB 421 DO PASS.** Motion carried unanimously.

Motion: REP. ERICKSON moved that **HB 421 AS AMENDED DO PASS.**

Discussion:

REP. GUTSCHE said that people all over the state talked about this as being really problematic. This is a concern from many people all over.

REP. STORY said that he would support this bill.

CHAIRPERSON YOUNKIN asked if REP. GUTSCHE remembered what was discussed about this on the subcommittee. REP. GUTSCHE said that there was a lot of support, but not enough to make it a committee bill. She remembers that there was a huge number of witnesses who testified on this bill.

REP. STORY said that it may be a concern that people are more afraid of than actually happens.

Motion/Vote: REP. ERICKSON moved that **HB 421 AS AMENDED DO PASS.** Motion carried unanimously.

ADJOURNMENT

Adjournment: 6:45 P.M.

REP. CINDY YOUNKIN, Chairman

ROBYN LUND, Secretary

CY/RL

EXHIBIT (nah33aad)